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EEB/TPP/IPE FOR TMCGOWAN, SKEAT
NEA/IPA FOR TGOLDBERGER
PLS PASS USTR TO JCHOEGROVES AND SFRANCESKI

E.O. 12958: N/A
TAGS: ECON ETRD KIPR IS
SUBJECT: ISRAEL: SPECIAL 301 REVIEW 2009: POST RECOMMENDATION

REF: A. TEL AVIV 156
¶B. TEL AVIV 2173
¶C. TEL AVIV 2709

¶1. (SBU) SUMMARY: From April 2008 - January 2009, Israel underwent an Out-of-Cycle Review (OCR) to address its deficiencies in Intellectual Property Rights (IPR) protection (see reftels). While several GOI officials made a good-faith effort to implement an agreed-upon action plan, the net result is that the OCR failed to meet its goals of introducing legislation to correct data exclusivity and patent-term extension issues in Israel. While Post hopes that the OCR will become a basis for future negotiations, the reality on the ground remains the same: Israel provides one of the weakest levels of protection for innovative pharmaceutical products among all industrialized countries. Due to the continuation of deficiencies that were the basis for past determinations of Israel's Special 301 status, and to maintain pressure on the GOI to take action, Post recommends that Israel remain on the Priority Watch List in ¶2009. END SUMMARY.

THE OCR

¶2. (SBU) The USG put forth a strong effort in much of 2008 to help the GOI address IPR issues, with disappointing results. While progress was made in laying a base for possible future negotiations, the GOI refused to formalize any of these results in written form. The reality is that on pharmaceuticals, Israel still provides one of the weakest levels of patent protection of any current or potential OECD-member country. During two formal interministerial meetings, there seems to have been a shift in GOI thinking, but much work remains to translate this thinking into changes in IPR legislation and practices on the ground. The OCR did prove helpful in bringing to light practices at the Ministry of Health that are preventing innovative pharmaceutical companies from having a full-term of data exclusivity, but absent GOI resources allocated to address this, the situation will not change.

¶3. (SBU) One problem is that the GOI does not speak with one voice on IPR issues, and internal differences become readily apparent in discussions on budgets and legislation. While Post perceived some improvement in the tone of these discussions, there was no concrete progress. There are also external players that stymie IPR reform, and those interests have not changed, even though the USG initiated a dialogue with key generic industry companies.

CONCLUSION

¶4. (SBU) While Post is hopeful that negotiations can begin where they left off at the end of 2008, the fact remains that Israel's pharmaceutical IPR, and, to a lesser extent, its

copyright laws, still do not meet USG standards for protection of intellectual property. Israel created its IPR system to benefit its domestic industries, but it must be fixed if Israel wants to be treated like an OECD-member country with a free trade agreement with the United States. Keeping Israel on the Priority Watch List, while acknowledging its progress in conducting an OCR, will maintain pressure on the GOI to take action in 2009. Without the continued Priority Watch List designation, Post sees no prospect of a newly elected Israeli government addressing U.S. IPR concerns.

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